

**March 16, 2009**

**Joseph Semple, MD**  
***President, Connecticut Society of Pathologists***  
**Testimony in Support**  
**Committee Bill No. 678**

I am here today on behalf of the Connecticut Society of Pathologists in support of Committee Bill 678. This bill would protect patients against physician markups of anatomic pathology services by requiring direct billing to the patient or insurer by the clinical laboratory that performed the service.

The legislation before you addresses an important issue that may needlessly escalate the cost of healthcare in Connecticut for patients who undergo Pap tests and biopsies. This legislation is a simple and straight forward way to eliminate a potential abusive and unethical billing practice known as "Mark-ups".

A "Mark-up" of anatomic pathology services occurs when a physician orders a pathology test for a patient, and requires the laboratory that performed the service to bill back to the physician. The physician who ordered the anatomic pathology service, but did not perform the service, then may increase the billing charge that is sent to the patient or a third-party payor. For example, a physician who orders a biopsy may be charged \$25.00 by the laboratory that performed the service. In turn, the physician then charges the patient or third-party payor \$75.00 for the biopsy, thus, making a profit of \$50.00 off a service that the physician did not perform.

This legislation effectively eliminates the markup practice by a referring physician through simply requiring the physician who performed or supervised the anatomic pathology service to be the physician who is directly billing the patient or the payor for the service. The federal government enacted a substantively similar direct billing law for Medicare patients 25 years ago and Connecticut Medicaid has also required direct billing for these services since that time. The reason for these federal and state direct billing

laws is to eliminate the cost of pathology service markups and also to discourage over-utilization of laboratory tests. The reason markups increase utilization is that referring physicians have an incentive to order more biopsies or Pap tests to incrementally increase their markup profit. Ordering unnecessary laboratory tests inflates health care costs. At a time when patients and employers are struggling with rising health care costs, markups should not be allowed under Connecticut law. Direct billing effectively stops this unethical practice.

This legislation is similar to laws that have been enacted in 15 other states ( Arizona, California, Massachusetts, Nevada, New Jersey, New York, Ohio, Rhode Island, Louisiana, South Carolina, Tennessee, Iowa, Montana, Kansas, and Maryland.) Some of these state laws are more than a decade old. Furthermore, American Medical Association (AMA), ethics policy 6.10, in pertinent part, states:

When services are provided by more than one physician, each physician should submit his or her own bill to the patient and be compensated separately, if possible. A physician should not charge a markup, commission, or profit on the services rendered by others.

With respect to Committee Bill 678, the Connecticut Society of Pathologists respectfully requests the following changes in order to ensure that the legislation is consistent with proven laws in other states regulating pathology billing, and does not interfere with accepted medical practice:

- The legislation as currently written does not have applicability to out-of-state labs billing in-state physicians: in order to close this loophole, the language must be amended to prohibit physicians ordering anatomic pathology services from billing for these services unless they supervise or perform the service;
- The legislation must be amended to ensure that both hospitals and public health clinics can be billed for these services;

- The definition of anatomic pathology services must clearly conform to medical practice by using the terms “gross and microscopic examination and histologic or cytologic processing”;
- The legislation must also allow the accepted practice of specimen referrals between laboratories for slide preparation (i.e. histologic/cytologic processing)
- Lastly, in every other state with this law the penalty for non-compliance is disciplinary action by the licensing Board and we therefore urge that the language be amended to provide for this enforcement sanction in Connecticut.

In closing, this legislation has three major public policy benefits for Connecticut if enacted:

- 1) It has the potential to improve the quality of healthcare and reduce healthcare costs for Connecticut patients;
- 2) it eliminates an unethical incentive for over-utilization of pathology services and skewing of physician judgment regarding lab referrals; and
- 3) it ensures physician compliance with AMA ethics and coding policies.

For these many reasons we urge your support for Committee Bill 678.

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*To be submitted: March 16, 2009*

## **Request for Corrections to Senate Bill 678**

(d) A provider of anatomic pathology services shall not submit a bill for the provision of such services to any person or entity other than the patient, the responsible insurer of a third-party payor, or a governmental agency or such agency's public or private agent that is acting on behalf of the recipient of such services,or a public health clinic, or hospital. Except for a provider at a referring clinical laboratory, no provider in the state shall, directly or indirectly, charge, bill, or otherwise solicit payment for anatomic pathology services unless such services were rendered personally by the provider or under the provider's direct supervision in accordance with section 353 of the Public Health Service Act (42 U.S.C. 263a).For purposes of this subsection, "anatomic pathology services" means the gross and microscopic examination and histologic or cytologic processing of human specimens, including histopathology or surgical pathology, cytopathology, hematology, subcellular pathology or molecular pathology or blood banking service performed by a pathologist and "provider" means any person or organization that furnishes health care services and is licensed or certified to furnish such services pursuant to chapters 370 to 373, inclusive, 375 to 384a, inclusive, 388, 398 and 399 or is licensed or certified pursuant to chapter 368d. For purposes of this subsection "referring clinical laboratory" means a clinical laboratory that refers a patient specimen for consultation, or for histologic or cytologic processing, excluding the laboratory of a physician's office or group practice that takes a patient specimen and does not perform the professional diagnostic component of the anatomic pathology service involved. Nothing in this subsection shall be construed to prohibit a clinical laboratory from billing a referring clinical laboratory when specimens are transferred between clinical laboratories for histologic or cytologic processing, or consultation. Violation of this subsection constitutes conduct subject to disciplinary action under subdivision (6) of subsection (a) of section 19a-  
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